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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL ASBERRY,
Plaintiff,

NO. CIV. S-01-2343 LKK/JFM

v.

PRETRIAL CONFERENCE ORDER
[FINAL]

CITY OF SACRAMENTO/SANITATION
DEPARTMENT,

Defendant.

Pursuant to court order, a Pretrial Conference was held in Chambers on March 6, 2006. JILL TELFER appeared as counsel for plaintiff; ANGELA CASAGRANDA appeared as counsel for defendant. JILL TELFER and ANGELA CASAGRANDA are therefore designated as lead trial counsel. On March 30, 2006, the court issued its tentative pretrial order. After consideration of the parties' objections and requests for augmentation, the court makes the following ORDERS:

I. JURISDICTION/VENUE

Jurisdiction is predicated upon 28 U.S.C. § 1331, and has previously been found to be proper by order of this court, as has

1 venue. Those orders are confirmed.

2 **II. JURY/NON-JURY**

3 Plaintiff has timely demanded a jury trial and this matter
4 will be tried to a jury.

5 **III. UNDISPUTED FACTS**

6 1. At the relevant time, plaintiff, Michael Asberry, worked
7 for defendant City of Sacramento.

8 2. At the relevant time, plaintiff held the position of
9 Sanitation Worker II.

10 3. Plaintiff incurred cumulative on-the-job injuries during
11 his employment.

12 4. In February 1998, plaintiff injured his back at work.

13 5. On August 24, 1998, plaintiff was diagnosed with a
14 herniated disk at L5-S1.

15 6. The City's workers' compensation claims representatives
16 periodically received physicians' orders limiting plaintiff's
17 physical activities and physicians' medical opinions regarding
18 plaintiff's physical capabilities and restrictions.

19 7. On February 22, 2000, plaintiff asked for an accommodation
20 of no lifting over 75 pounds.

21 8. On March 28, 2000, the City transferred plaintiff back to
22 his position as a Sanitation Worker II.

23 **IV. DISPUTED FACTUAL ISSUES**

24 1. Whether or not from the time that plaintiff filed his
25 workers' compensation claim, the City's claim representatives
26 periodically received physicians' orders limiting the plaintiff's

1 lifting.

2 2. Whether or not, for the most part, those orders restricted
3 lifting over 40 pounds.

4 3. Whether or not, in approximately September or October of
5 1998, plaintiff was placed in a side-loader position, primarily
6 performing residential pickup.

7 4. Whether or not in the modified position, plaintiff did not
8 need to lift heavy objects.

9 5. Whether or not in this modified position, plaintiff was
10 also assigned odd jobs and performed everything except recycling.

11 6. Whether or not plaintiff worked the side loader for
12 approximately nine months and received a meets-and-exceeds
13 performance evaluation.

14 7. Whether or not, in July of 1999, the City received a
15 progress report from plaintiff's treating physician.

16 8. Whether or not the report stated that, in addition to the
17 40 pound lifting restriction, plaintiff should do no "bending, or
18 stooping" and "no consecutive sitting for over one to two hours
19 without a five to ten minute stretch break."

20 9. Whether or not, following this report, the City decided
21 that plaintiff was unable to meet the physical requirements of any
22 position available for the category of Sanitation Worker II.

23 10. Whether or not, on September 8, 1999, plaintiff was
24 terminated.

25 11. Whether or not plaintiff provided the City with a
26 physician's release stating the plaintiff's only restriction was

1 he was not to lift more than 40 pounds.

2 12. Whether or not plaintiff was "disabled" within the
3 meanings of the ADA or the FEHA.

4 13. Whether or not plaintiff was regarded as having a
5 physical impairment that substantially limited one or more of his
6 major life activities under the ADA.

7 14. Whether or not plaintiff had a physical condition that
8 limited his ability to participate in a major life activity under
9 the FEHA.

10 15. Whether or not plaintiff was regarded as having a
11 physical condition that limited his ability to participate in a
12 major life activity under the FEHA.

13 16. Whether or not plaintiff was able to perform the
14 essential functions of the job(s) at issue, with or without a
15 reasonable accommodation.

16 17. Whether or not lifting and/or bending, stooping or
17 sitting are essential functions of the Sanitation Worker II
18 position.

19 18. Whether or not plaintiff requested an accommodation
20 before February 22, 2000.

21 19. Whether or not the City failed to accommodate plaintiff.

22 20. Whether or not the City knew plaintiff had a qualified
23 disability.

24 21. Whether or not any requested accommodation was
25 reasonable.

26 ////

1 22. Whether or not any requested accommodation would have
2 created an undue hardship for the City.

3 23. Whether or not the City failed to engage in the
4 interactive process.

5 24. Whether or not allowing plaintiff to be permanently
6 assigned to the side loader position would have created an undue
7 hardship for the City.

8 25. Whether or not the City terminated plaintiff with a
9 qualified disability as the motivating factor.

10 26. Whether or not plaintiff was more senior than many of the
11 assigned non-floating employees.

12 27. Whether or not Rутty fabricated claims that plaintiff
13 would lose his medical coverage, held up his paycheck and supplied
14 the City's doctors with misinformation regarding plaintiff to his
15 detriment such as plaintiff was performing the recycle position.

16 28. Whether or not defendants delayed plaintiff's reasonable
17 accommodation request for specifications treatment for six months.

18 29. Whether or not the City has tried to impose discipline
19 and threatened discipline with plaintiff's disability as a
20 motivating factor.

21 30. Whether or not the City permitted plaintiff to work in
22 a modified Sanitation Worker position until his physical condition
23 was found to be permanent and stationary.

24 31. Whether or not in August of 1999, the City compared the
25 duties of a Sanitation Worker II with plaintiff's physical
26 restrictions and limitations to determine whether he could perform

1 any of the operational positions in the Solid Waste Department.

2 32. Whether or not in August of 1999, the City determined
3 that plaintiff could not perform the duties of any of the
4 operational positions in Solid Waste due to his physical
5 limitations and restrictions.

6 33. Whether or not plaintiff entered vocational
7 rehabilitation in or about September 1999.

8 34. Whether or not plaintiff worked for defendant City of
9 Sacramento as a garbage collector from September 3, 1992 until
10 September 8, 1999 and March 22, 2000 to the present.

11 35. Whether or not at all relevant times, plaintiff worked
12 as a Sanitation II classification for the City.

13 36. Whether or not plaintiff was precluded from very heavy
14 work.

15 37. Whether or not plaintiff worked in a temporary
16 modified position from approximately July 1998 to October 1998
17 doing clerical work.

18 38. Whether or not, on March 22, 2000, plaintiff was allowed
19 to return to the position he held prior to September 8, 1999.

20 39. Whether or not from September 8, 1999 to March 28, 2000,
21 plaintiff did not work and did not receive any compensation.

22 40. Whether or not all the performance evaluations have been
23 favorable.

24 **V. DISPUTED EVIDENTIARY ISSUES**

25 On December 4, 2003, the court heard and resolved the parties'
26 motions in limine relative to disputed evidentiary issues.

1 On plaintiff's motions in limine, the court ruled as follows:

2 1. To exclude evidence of alleged wage garnishment, the
3 motion was granted.

4 2. To exclude documents and testimony of witnesses not
5 identified in defendant's disclosure, the motion was denied.

6 3. To exclude Terry Jiminez as a witness not listed in the
7 initial disclosure, the motion was denied.

8 4. To exclude testimony regarding a \$13,000 setoff, the
9 motion was granted.

10 5. To exclude any evidence regarding the stipulation that
11 plaintiff received the setoff, the motion was denied.

12 On defendant's motions in limine, the court ruled as follows:

13 1. To exclude evidence that Cheryl Rutty harassed plaintiff,
14 the motion was denied.

15 2. To exclude evidence about interactions between Ms. Rutty
16 and plaintiff, the motion was denied.

17 3. To exclude evidence of alleged pretextual and threatened
18 discipline, the motion was denied.

19 4. To exclude evidence of delay of approval of treatment, the
20 motion was denied.

21 5. To exclude evidence of delay of approval of treatment by
22 steroid injections, the motion was granted.

23 Defendant has brought on motions in limine relative to the
24 plaintiff's religious beliefs and to exclude evidence of
25 plaintiff's bankruptcy action. The court will take up the motion
26 in limine on June 6, 2006 at 1:30 p.m.

1 The parties will not be permitted to bring motions in limine
2 relative to any evidentiary issues not listed in the final pretrial
3 order absent a showing that the issue was not reasonably
4 foreseeable at the time of the pretrial order.

5 **VI. RELIEF SOUGHT**

6 Plaintiff seeks the following:

- 7 a. Compensatory damages, including back pay;
8 b. Pain and suffering damages; and
9 c. An award of reasonable attorneys' fees and costs.

10 Defendant seeks the following:

- 11 a. Judgment in its favor; and
12 b. An award of reasonable attorneys' fees and costs.

13 **VII. POINTS OF LAW**

14 Trial briefs shall be filed with the court no later than
15 fourteen (14) days prior to the date of trial in accordance with
16 Local Rule 16-285. The parties shall brief the following points
17 of law in their trial briefs:

18 a. The elements, standards, and burden of proof relative to
19 a claim for failure to accommodate under FEHA under the facts and
20 circumstances of this case; and

21 b. The measure of damages as to claims for failure to
22 accommodate under the FEHA.

23 ANY CAUSES OF ACTION OR AFFIRMATIVE DEFENSES NOT EXPLICITLY
24 ASSERTED IN THE PRETRIAL ORDER UNDER POINTS OF LAW AT THE TIME IT
25 BECOMES FINAL ARE DISMISSED, AND DEEMED WAIVED.

26 **VIII. ABANDONED ISSUES**

1 None.

2 **IX. WITNESSES**

3 Plaintiff anticipates calling the following witnesses: See
4 Attachment "A."

5 Defendant anticipates calling the following witnesses: See
6 Attachment "B."

7 Each party may call a witness designated by the other.

8 A. No other witnesses will be permitted to testify unless:

9 (1) The party offering the witness demonstrates that the
10 witness is for the purpose of rebutting evidence which could not
11 be reasonably anticipated at the Pretrial Conference, or

12 (2) The witness was discovered after the Pretrial
13 Conference and the proffering party makes the showing required in
14 "B" below.

15 B. Upon the post-Pretrial discovery of witnesses, the
16 attorney shall promptly inform the court and opposing parties of
17 the existence of the unlisted witnesses so that the court may
18 consider at trial whether the witnesses shall be permitted to
19 testify. The evidence will not be permitted unless:

20 (1) The witnesses could not reasonably have been
21 discovered prior to Pretrial;

22 (2) The court and opposing counsel were promptly
23 notified upon discovery of the witnesses;

24 (3) If time permitted, counsel proffered the witnesses
25 for deposition;

26 (4) If time did not permit, a reasonable summary of the

witnesses' testimony was provided opposing counsel.

X. EXHIBITS, SCHEDULES AND SUMMARIES

Pursuant to the court's order dated May 16, 2006, the court shall rule on the parties' objections as to exhibits on June 6, 2006 at 1:30 p.m. The final pretrial order will be amended accordingly.

The attorney for each party is directed to appear before and present an original and one (1) copy of said exhibit to Ana Rivas, Deputy Courtroom Clerk, not later than 10:30 a.m. on the date set for trial. All exhibits shall be submitted to the court in binders. Plaintiff's exhibits shall be listed numerically. Defendant's exhibits shall be listed alphabetically. The parties shall use the standard exhibit stickers provided by the court: pink for plaintiff and blue for defendant.

XI. DISCOVERY DOCUMENTS

Neither party intends to introduce discovery documents in their case-in-chief.

XII. FURTHER DISCOVERY OR MOTIONS

Pursuant to the court's Status Conference Order, all discovery and law and motion was to have been conducted so as to be completed as of the date of the Pretrial Conference. That order is confirmed. The parties are, of course, free to do anything they desire pursuant to informal agreement. However, any such agreement will not be enforceable in this court.

XIII. STIPULATIONS

None.

1 XIV. AMENDMENTS/DISMISSALS

2 None.

3 XV. FURTHER TRIAL PREPARATION

4 A. Counsel are directed to Local Rule 16-285 regarding the
5 contents of and the time for filing trial briefs.

6 B. Counsel are informed that the court has prepared a set
7 of standard jury instructions. In general, they cover all aspects
8 of the trial except those relating to the specific claims of the
9 complaint. Accordingly, counsel need not prepare instructions
10 concerning matters within the scope of the prepared instructions.
11 A copy of the prepared instructions was emailed to the parties
12 concurrently with the tentative Pretrial Order.

13 C. Counsel are further directed that their specific jury
14 instructions shall be filed fourteen (14) calendar days prior to
15 the date of trial. As to any instructions counsel desires to
16 offer, they shall be prepared in accordance with Local Rule 51-
17 163(b)(1) which provides:

18 "Two copies of the instructions shall be submitted. One
19 copy shall be electronically filed as a .pdf document
20 and shall contain each instruction on a separate page,
21 numbered and identified as to the party presenting it.
Each instruction shall cite the decision, statute,
ordinance, regulation or other authority supporting the
proposition stated in the instruction."

22 The second copy ("jury copy") shall be submitted by e-mail to
23 lkkorders@caed.uscourts.gov.

24 In addition, counsel shall provide copies of proposed forms
25 of verdict, including special verdict forms, at the time the
26 proposed jury instructions are filed with the court.

1 D. It is the duty of counsel to ensure that any deposition
2 which is to be used at trial has been filed with the Clerk of the
3 Court. Counsel are cautioned that a failure to discharge this duty
4 may result in the court precluding use of the deposition or
5 imposition of such other sanctions as the court deems appropriate.

6 E. The parties are ordered to file with the court and
7 exchange between themselves not later than one (1) week before the
8 trial a statement designating portions of depositions intended to
9 be offered or read into evidence (except for portions to be used
10 only for impeachment or rebuttal).

11 F. The parties are ordered to file with the court and
12 exchange between themselves not later than one (1) week before
13 trial the portions of answers to interrogatories which the
14 respective parties intend to offer or read into evidence at the
15 trial (except portions to be used only for impeachment or
16 rebuttal).

17 G. The court has extensive audiovisual equipment available.
18 Any counsel contemplating its use shall contact the court's
19 Telecommunications Manager, Andre Carrier, at (916) 930-4223, at
20 least two weeks in advance of trial to receive the appropriate
21 training.

22 **XVI. SETTLEMENT NEGOTIATIONS**

23 A Settlement Conference was held before the Honorable Frank
24 C. Damrell, Jr.

25 **XVII. AGREED STATEMENTS**

26 None.

1 **XVIII. SEPARATE TRIAL OF ISSUES**

2 None.

3 **XIX. IMPARTIAL EXPERTS/LIMITATION OF EXPERTS**

4 None.

5 **XX. ATTORNEYS' FEES**

6 The matter of the award of attorneys' fees to prevailing
7 parties pursuant to statute will be handled by motion in accordance
8 with Local Rule 54-293.

9 **XXI. MISCELLANEOUS**

10 None.

11 **XXII. ESTIMATE OF TRIAL TIME/TRIAL DATE**

12 Trial by jury is **SET** for June 13, 2006, at 10:30 a.m., in
13 Courtroom No. 4. The parties represent in good faith that the
14 trial will take approximately five (5) days.

15 Counsel are to call Ana Rivas, Courtroom Deputy, at (916) 930-
16 4133, one week prior to trial to ascertain status of trial date.

17 **XXIII. MODIFICATIONS TO PRETRIAL ORDER**

18 The parties are reminded that pursuant to Federal Rule of
19 Civil Procedure 16(e), this order shall control the subsequent
20 course of this action and shall be modified only to prevent
21 manifest injustice.

22 IT IS SO ORDERED.

23 DATED: May 17, 2006.

24 /s/Lawrence K. Karlton
25 LAWRENCE K. KARLTON
26 SENIOR JUDGE
UNITED STATES DISTRICT COURT

JILL P. TELFER (State Bar No. 145450)
LAW OFFICES OF JILL P. TELFER
A Professional Corporation
331 J. Street, Suite 200
Sacramento, California 95814
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Attorneys for Plaintiff
MICHAEL ASBERRY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL ASBERRY,

Plaintiffs,

v.

CITY OF SACRAMENTO/SANITATION
DEPARTMENT,

Defendants.

CASE NO. CIV. S-01-2343 LKK KJM

APPENDIX G. TO PLAINTIFF'S AMENDED
PRETRIAL STATEMENT

PLAINTIFF'S TRIAL WITNESSES LIST

Date: April 21, 2003

Time: 1:30 p.m.

Courtroom: 4

Judge: The Honorable Lawrence K.
Karlton, Chief Judge Emeritus:

Plaintiff MICHAEL ASBERRY anticipates calling the following witnesses at trial:

Michael Asberry

Plaintiff will testify about his physical condition, his ability to do the job, the essential job functions of the position, the lack of a good faith interactive process, the adverse actions taken against him, the work environment, and his damages.

c/o Law Offices of Jill P. Telfer
331 J. Street, Suite 200
Sacramento, CA 95814
446.1916

Candy Ayers

will testify about her interactions with Plaintiff. 921 10th Street,
Sacramento, CA 95814, (916) 433-4950

Plaintiff's Trial Witness List

APPENDIX G TO PLAINTIFF'S
PRETRIAL STATEMENT

ATTACHMENT "A"

1	Pia Basudev	will testify about her efforts to get Plaintiff back to work, Defendant's failure to engage in the interactive process, and the ability of the City to accommodate Plaintiff. She will also testify about the pattern and practice of discriminating against those with disability by refusing to accommodate, interact and efforts to get rid of such employees if and when they develop a disability.
2		(916) 928-0399
3	Otto Braswell	will testify about Defendant's failure to engage in the interactive process, and the ability of the City to accommodate Plaintiff. He will also testify about the pattern and practice of discriminating against those with disability by refusing to accommodate, interact and efforts to get rid of such employees if and when they develop a disability. He also is knowledgeable of Plaintiff's work performance.
4		10 th Street, Sacramento, CA 95814
5	Delbert Burrell	will testify about Defendant's failure to engage in the interactive process, and the ability of the City to accommodate Plaintiff. He will also testify about the pattern and practice of discriminating against those with disability by refusing to accommodate, interact and efforts to get rid of such employees if and when they develop a disability. He also is knowledgeable of Plaintiff's work performance.
6		10 th Street, Sacramento, CA 95814
7	Allen Carruth	will testify about Defendant's failure to engage in the interactive process, and the ability of the City to accommodate Plaintiff. He will also testify about the pattern and practice of discriminating against those with disability by refusing to accommodate, interact and efforts to get rid of such employees if and when they develop a disability. He also is knowledgeable of Plaintiff's work performance.
8		10 th Street, Sacramento, CA 95814
9	Brian Higginbotham	Higginbotham will testify about the lack of an interactive process, the adverse actions taken against him, with his physical condition as a motivating factor.
10	Kathy Widing	will testify about her efforts to get Plaintiff back to work, Defendant's failure to engage in the interactive process, and the ability of the City to accommodate Plaintiff. She will also testify about the pattern and practice of discriminating against those with disability by refusing to accommodate, interact and efforts to get rid of such employees if and when they develop a disability.
11		13305 Woodlake Road, Grass Valley CA 95949
12	Cedar Kehoe	c/o Law Offices of O'Brien & Brown LLP 2339 Gold Meadow Way, Suite 230 Gold River, CA 95670
13	Eduardo Desmond	will testify about Plaintiff's performance, Defendant's failure to engage in the interactive process, and the ability of the City to accommodate Plaintiff. He will also testify about the pattern and practice of
14	Plaintiff's Trial Witness List	
15	APPENDIX G TO PLAINTIFF'S	
16	PRETRIAL STATEMENT	

1 discriminating against those with disability by refusing to accommodate,
2 interact and efforts to get rid of such employees if and when they develop
3 a disability.
4 921 10th Street, Sacramento, CA 95814
5 Dean Khan will testify about Defendant's failure to engage in the interactive process,
6 and the ability of the City to accommodate Plaintiff. He will also testify
7 about the pattern and practice of discriminating against those with
8 disability by refusing to accommodate, interact and efforts to get rid of
9 such employees if and when they develop a disability. He also is
10 knowledgeable of Plaintiff's work performance.
11 10th Street, Sacramento, CA 95814
12 Edison Hicks will testify about Defendant's failure to engage in the interactive process,
13 and the ability of the City to accommodate Plaintiff. He will also testify
14 about the pattern and practice of discriminating against those with
15 disability by refusing to accommodate, interact and efforts to get rid of
16 such employees if and when they develop a disability. He also is
17 knowledgeable of Plaintiff's work performance.
18 10th Street, Sacramento, CA 95814
19 John Irish will testify Defendant's failure to engage in the interactive process, and
20 the ability of the City to accommodate Plaintiff. He will also testify
21 about the pattern and practice of discriminating against those with
22 disability by refusing to accommodate, interact and efforts to get rid of
23 such employees if and when they develop a disability. He also is
24 knowledgeable of Plaintiff's work performance.
25 921 10th Street, Sacramento, CA 95814
26 Rudy Juarez will testify about Defendant's failure to engage in the interactive process,
27 and the ability of the City to accommodate Plaintiff. He will also testify
28 about the pattern and practice of discriminating against those with
disability by refusing to accommodate, interact and efforts to get rid of
such employees if and when they develop a disability. He also is
knowledgeable of Plaintiff's work performance.
10th Street, Sacramento, CA 95814
Cheryl Rutty will testify about her interactions with Plaintiff, his requests for
reasonable accommodation and the City's response. 921 10th Street,
Sacramento, CA 95814, (916) 433-4950
921 10th Street, Sacramento, CA 95814
Beicious Smith will testify about Defendant's failure to engage in the interactive process,
and the ability of the City to accommodate Plaintiff. He will also testify
about the pattern and practice of discriminating against those with
disability by refusing to accommodate, interact and efforts to get rid of
such employees if and when they develop a disability. He also is
knowledgeable of Plaintiff's work performance.

Plaintiff's Trial Witness List

APPENDIX G TO PLAINTIFF'S

PRETRIAL STATEMENT

1 J. Graham Bray, M.D. Plaintiff's medical condition, communications with Defendant, and the
2 necessary reasonable accommodation.
3 425 University Avenue, Suite 140, Sacramento, CA 95825, (916) 920-
4 1222.
5 Daniel Dunlevy, M.D. Plaintiff's medical condition, communications with Defendant, and the
6 necessary reasonable accommodation. 3609 Mission Ave., Suite B,
7 Carmichael, CA 95608, (916) 973-8721.
8 Kenneth Koskella, M.D. Plaintiff's medical condition, communications with Defendant, and the
9 necessary reasonable accommodation. 3530 Auburn Blvd, Suite 3,
10 Sacramento, CA 95821, 800-338-7403.
11 Robert McAuley, M.D. Plaintiff's medical condition, communications with Defendant, and the
12 necessary reasonable accommodation.
13 Jim Wallace, D.C. Plaintiff's medical condition, communications with Defendant, and the
14 necessary reasonable accommodation. 3609 Mission Ave., Suite B,
15 Carmichael, CA 95608,
16 (916) 973-8721.
17 Jacquelyn Sangers will testify about Defendant's failure to engage in the interactive process,
18 and the ability of the City to accommodate Plaintiff. He will also testify
19 about the pattern and practice of discriminating against those with
20 disability by refusing to accommodate, interact and efforts to get rid of
21 such employees if and when they develop a disability. He also is
22 knowledgeable of Plaintiff's work performance.
23 10th Street, Sacramento, CA 95814
24 Reina Schwartz will testify about Defendant's failure to engage in the interactive process,
25 and the ability of the City to accommodate Plaintiff. He will also testify
26 about the pattern and practice of discriminating against those with
27 disability by refusing to accommodate, interact and efforts to get rid of
28 such employees if and when they develop a disability. He also is
knowledgeable of Plaintiff's work performance.
10th Street, Sacramento, CA 95814

Dated: May 7, 2003

LAW OFFICES OF JILL P. TELFER

for JILL P. TELFER
Attorneys for Plaintiff.
MICHAEL ASBERRY

Plaintiff's Trial Witness List
APPENDIX G TO PLAINTIFF'S
PRETRIAL STATEMENT

DEFENDANT'S LIST OF PROPOSED WITNESSES

1. Edna Young, C/O City of Sacramento 921 10th Street, Sacramento, California
2. Cheryl Rutty, C/O City of Sacramento 921 10th Street, Sacramento, California
3. Elizabeth Trimm, Hanna Brophy Maclean, McAleer, 99 Scripps Drive, Sacramento, California 95825
4. S. Rey Pena, 9867 Elder Creek Road, Sacramento, California 95829
5. Candy Ayers, City of Sacramento 2812 Meadowview Road, Sacramento, California
6. Margaret Allen, 1616 Redwood Lane, Davis, California 95816
7. Delbert Burrell, City of Sacramento, 2812 Meadowview Road, Sacramento, California
8. Reina Schwartz, City of Sacramento 730 I Street, Sacramento, California
9. Terry Jimenez, City of Sacramento 921 10th Street, Sacramento, California
10. Frances Gould, 921 10th Street, Sacramento, California
11. Kenneth Fleming, 921 10th Street, Sacramento, California
12. Debbie Solano, 921 10th Street, Sacramento, California
13. Kenneth Koskella, M.D., 3530 Auburn Blvd, Suite 3, Sacramento, California 95821
14. J. Graham Bray, M.D., 425 University Avenue, suite 140, Sacramento, California 95825
15. Daniel Dunlevy, M.D., 5240 Gulf Place, West Vancouver, BC, Canada
16. William Whiting, III, 2386 Fair Oaks Blvd, Suite 112, Sacramento, California 95825
17. Alan Pace, current address unknown
18. James Wallace, D.C., 3609 Mission Avenue, Suite B, Carmichael, California 95608
19. Lwanda Okella, EEOC 1301 Clay Street, Suite 1170-N Oakland, California 94612-5217
20. Norma Smith, 921 10th Street, Sacramento, California
21. Edison Hicks, 2812 Meadowview Road, Sacramento, California
22. Jacqueline Sanders, 921 10th Street, Sacramento, California
23. Pia Basudev, City of Sacramento 921 10th Street, Sacramento, California
24. Patty Velasquez
25. Lori Swinehart

ATTACHMENT "B"

JILL P. TELFER (State Bar No. 145450)
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Attorneys for Plaintiff
MICHAEL ASBERRY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL ASBERRY,

Plaintiffs,

v.

CITY OF SACRAMENTO/SANITATION
DEPARTMENT,

Defendants.

Case No. CIV. S-01-2343 LKK KJM

**APPENDIX H TO PLAINTIFF'S
AMENDED PRETRIAL STATEMENT**

PLAINTIFF'S TRIAL EXHIBITS

Date: May 19, 2003
Time: 1:30 p.m.
Courtroom: 4
Judge: The Honorable Lawrence
K. Karlton, Chief Judge
Emeritus:

Plaintiff MICHAEL ASBERRY will mark the following documents as Trial Exhibits in this matter:

- Exhibit 1 Michael Asberry Employee Performance Appraisal Report from August 16, 1997 to August 15, 1998.
- Exhibit 2 Michael Asberry Employee Performance Appraisal Report from August 15, 1998 to August 14, 1999.
- Exhibit 3 Michael Asberry Employee Performance Appraisal Report from August 14, 1999 to August 12, 2000
- Exhibit 4 Solid Waste Division Organizational Chart bate stamped PR20-0001-0002.
- Exhibit 5 City of Sacramento-Modified/Alternative Duty Policy and Forms
- Exhibit 6 March 10, 1998 Doctor's Report of Occupational Injury.

ATTACHMENT "C"

- 1 Exhibit 7 June 23, 1998 Duty Status Report
2 Exhibit 8 April 5, 1999 Psychiatry Follow-up Report of Dr. Dunlevy
3 Exhibit 9 April 5, 1999 Dr. Graham Bray Evaluation
4 Exhibit 10 June 8, 1999 Psychiatry Follow-up Report of Dr. Dunlevy
5 Exhibit 11 July 6, 1999 Dr. Graham Bray Evaluation
6 Exhibit 12 July 7, 1999 Primary Treating Physicians Progress Report of Dr. Dunlevy
7 Exhibit 13 July 27, 1999 Evaluation of Dr. Kenneth R. Koskella
8 Exhibit 14 August 13, 1999 letter from Dr. Graham Bray to Elizabeth Trimm
9 Exhibit 15 August 18, 1999 memo from S. Ray Pena to Michael Asberry.
10 Exhibit 16 August 31, 1999 Memo from Edison Hicks to S. Ray Pena
11 Exhibit 17 September 8, 1999 Termination Letter from Reina Schwartz of Michael Asberry
12 Exhibit 18 Executed Authorization Request for Nerve Root block, dated September 9, 1999.
13 Exhibit 19 September 10, 1999 Letter from Pia Basudev to Reina Schwartz enclosing doctor's
14 note restricting to 40 lbs.
15 Exhibit 20 September 18, 1999 hand-written letter from Michael Asberry to the Worker's
16 Compensation Unit.
17 Exhibit 21 September 30, 1999 letter to Margaret Allan from Pia Basudev
18 Exhibit 22 October 7, 1999 Primary Treating Physicians Progress Report
19 Exhibit 23 March 13, 2000 letter from Elizabeth Trimm to Michael Asberry.
20 Exhibit 24 Memo from Pia Basudev to EEOC counselor Lwanda Okello dated 11/16/00
21 enclosing Defendant's October 999 grievance response to floating versus assigned
22 Sanitation Worker II positions.
23 Exhibit 25 The EEOC determination of discrimination
24 Dated: May 7, 2003

25 LAW OFFICES OF JILL P. TELFER

26
27 for JILL P. TELFER
28 Attorneys for Plaintiff,
MICHAEL ASBERRY

DEFENDANT'S LIST OF PROPOSED TRIAL EXHIBITS

1
2 Exhibit A City of Sacramento Employee Accident and Injury Record for Michael Asberry
3 Exhibit B June 11, 1997 Attending Physician's Report
4 Exhibit C February 20, 1998 Workers' Compensation Claim
5 Exhibit D February 23, 1998 City of Sacramento Report of Industrial Injury
6 Exhibit E March 10, 1998 Doctors First Report of Occupational Injury or Illness
7 Exhibit F June 24, 1998 Workers' Compensation Claim
8 Exhibit G June 23, 1998 Duty Status Report
9 Exhibit H July 10, 1998 Modified Duty Assignment
10 Exhibit I September 25, 1998 Progress Report by Sacramento Spine and Physical
11 Therapy
12 Exhibit J July 30, 1998 Physiatry Consultation
13 Exhibit K September 8, 1998 Physiatry Follow-Up Report
14 Exhibit L February 8, 1999 Physiatry Follow-Up Report
15 Exhibit M April 5, 1999 Bray Report
16 Exhibit N April 5, 1999 Physiatry Follow-Up Report
17 Exhibit O April 5, 1999 Work Restriction and TTD Report
18 Exhibit P April 27, 1999 Objection to Treating Doctor's Report
19 Exhibit Q June 8, 1999 Physiatry Follow-Up Report
20 Exhibit R July 6, 1999 Bray Report
21 Exhibit S July 7, 1999 Primary Treating Physician's Progress Report
22 Exhibit T July 20, 1999 Universal Chiropractic Report
23 Exhibit U July 27, 1999 Koskella Report with Findings Summary Cover Sheet
24 Exhibit V July 29, 1999 Primary Treating Physician's Progress Report
25 Exhibit W August 13, 1999 Bray Report
26 Exhibit X September 8, 1999 Primary Treating Physician's Progress Report
27 Exhibit Y September 8, 1999 Primary Treating Physician's Progress Report
28 Exhibit Z September 9, 1999 nerve root block authorization

— ATTACHMENT "D" —

DEFENDANT'S LIST OF PROPOSED TRIAL EXHIBITS

- 1 Exhibit 2A September 4, 1999 McCauley Report
- 2 Exhibit 2B October 5, 1999 Koskella Report
- 3 Exhibit 2C October 7, 1999 Primary Treating Physician's Progress Report
- 4 Exhibit 2D September 7, 1999 and October 13, 1999 work restrictions
- 5 Exhibit 2E November 9, 1999 Primary Treating Physician's Progress Report
- 6 Exhibit 2F November 24, 1999 Operative Report
- 7 Exhibit 2G March 7, 2000 Bray Report with March 13, 2000 Trimm cover letter
- 8 Exhibit 2H Stipulations with Request for Award
- 9 Exhibit 2I Gymnasium membership prescriptions dated November 9, 1999, November 28,
2000, May 29, 2001 and January 29, 2002
- 10 Exhibit 2J December 20, 2001 Universal Chiropractic Report
- 11 Exhibit 2K Detail of Chiropractor visits for Michael Asberry dated January 999 through
2002 with cover letter dated January 15, 2002
- 12 Exhibit 2L July 11, 2002 Primary Treating Physician's Progress Report
- 13 Exhibit 2M July 10, 2002 Universal Chiropractic Report with attachments
- 14 Exhibit 2N August 8, 2002 Primary Treating Physician's Progress Report with Young cover
letter
- 15 Exhibit 2O August 22, 2002 Universal Chiropractic Report with attachments and Young cover
letter
- 16 Exhibit 2P November 14, 2002 Primary Treating Physician's Progress Report with
attachment and Young cover letter
- 17 Exhibit 2Q February 20, 2003 Universal Chiropractic Report with attachments and Young
cover letter
- 18 Exhibit 2R Sanitation Worker II Job Description dated June 1988
- 19 Exhibit 2S Description of Employee's Job Duties for Sanitation Worker II Side Loader
- 20 Exhibit 2T January 10, 2000 Essential Functions Job Analysis with January 25, 2000 Trimm
cover letter
- 21 Exhibit 2U October 11, 1999 Margaret Allen letter to Pia Basudev
- 22 Exhibit 2V September 28, 1999 Trimm letter to Dunlevy
- 23 Exhibit 2W October 12, 1999 Mastagni letter to City of Sacramento
- 24 Exhibit 2X November 16, 2000 Basudev letter to Okella with October 5, 1999 attachment
from Sanders to Basudev

- 1 Exhibit 2Y August 18, 1999 Pena letter to Michael Asberry
- 2 Exhibit 2Z August 18, 1999 Pena Memorandum to Hicks
- 3 Exhibit 3A Vocational rehabilitation reply form signed by Michael Asberry on August 20, 1999
- 4 Exhibit 3B August 31, 1999 Hicks Memorandum to Pena
- 5 Exhibit 3C September 8, 1999 Schwartz memorandum to Michael Asberry
- 6 Exhibit 3D September 10, 1999 Pena letter to Michael Asberry
- 7 Exhibit 3E September 10, 1999 Pena letter to Michael Asberry
- 8 Exhibit 3F September 10, 1999 Pena letter to Michael Asberry
- 9 Exhibit 3G Vocational rehabilitation Case Assignment to Whiting
- 10 Exhibit 3H September 22, 1999 Pena letter to Michael Asberry
- 11 Exhibit 3I October 21, 1999 Pena letter to Michael Asberry
- 12 Exhibit 3J November 16, 1999 Pena letter to John Pedone
- 13 Exhibit 3K November 23, 1999 Whiting letter to Mason
- 14 Exhibit 3L December 30, 1999 Pena letter to Michael Asberry
- 15 Exhibit 3M Michael Asberry Resume
- 16 Exhibit 3N Vocational Rehabilitation Budget and Agreement initialed by Michael Asberry
- 17 Exhibit 3O Vocational rehabilitation plan initialed by Michael Asberry
- 18 Exhibit 3P Aviation and Electronic Schools of America course description, billing and payments
- 19 Exhibit 3Q March 23, 2000 Pena letter to Michael Asberry
- 20 Exhibit 3R Notice of termination of vocational rehabilitation services
- 21 Exhibit 3S June 14, 1999 Ruffy letter to Michael Asberry re: mileage with attached mileage reimbursement requests from Michael Asberry and maps
- 22 Exhibit 3T Vocational rehabilitation Maintenance Allowance Payments/Checks from October 1999 through August 2000
- 23 Exhibit 3U June 30, 2000 Pedone letter to Young re: short term disability payment of \$10,340
- 24 Exhibit 3V April 30, 1999 Ruffy letter to Michael Asberry re: disability payments
- 25 Exhibit 3W September 13, 2000 Young letter to Michael Asberry re: total disability payments with payments/checks attachments
- 26
- 27
- 28

- 1 Exhibit 3X Michael Asberry attendance records for 1998, 1999 and 2000
- 2 Exhibit 3Y Michael Asberry time sheets for 1998, 1999, 2000, 2001 and 2002
- 3 Exhibit 3Z Agreement between City of Sacramento and Int'l Union of Operating Engineers
4 1995-2000.
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